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COMMITTEE PRINT

THE "IMMIGRATION AND NATIONALITY
ACT AMENDMENTS OF 1976"
(P.L. 94-571)

A SUMMARY AND EXPLANATION

COMMITTEE ON THE JUDICIARY
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FOREWORD

On October 20, 1976 the President signed into law (Public Law 94-571), a bill (H.R. 14535) which I introduced, to bring our immigration procedures for the Western Hemisphere into conformity with those in effect for the Eastern Hemisphere following enactment of the Act of October 3, 1965 (66 Stat. 163).

In approving the 1965 amendments to the Immigration and Nationality Act, Congress repealed the offensive "national origins" system of immigration which placed primary emphasis on a person's place of birth. The 1965 law also placed a numerical ceiling of 120,000 on Western Hemisphere immigration but failed to establish a mechanism for distributing visas under that ceiling. As a result, intending immigrants from the Western Hemisphere were forced to apply for visas on a first-come, first-served basis and no consideration was given to their family ties to persons already in the United States.

To rectify this unintended situation, this new law extends, with minor modifications, the existing preference system, which places top priority on family reunification, and the 20,000 per country limitation (both currently in effect in the Eastern Hemisphere) to the countries of the Western Hemisphere. Other provisions in Public Law 94-571 are also designed to equalize immigration policy and procedures between the Eastern and Western Hemisphere. I am hopeful that we will ultimately adopt a worldwide ceiling on immigration rather than the separate hemispheric ceilings of 170,000 for the Eastern Hemisphere and 120,000 for the Western Hemisphere, which are carried forward in Public Law 94-571.

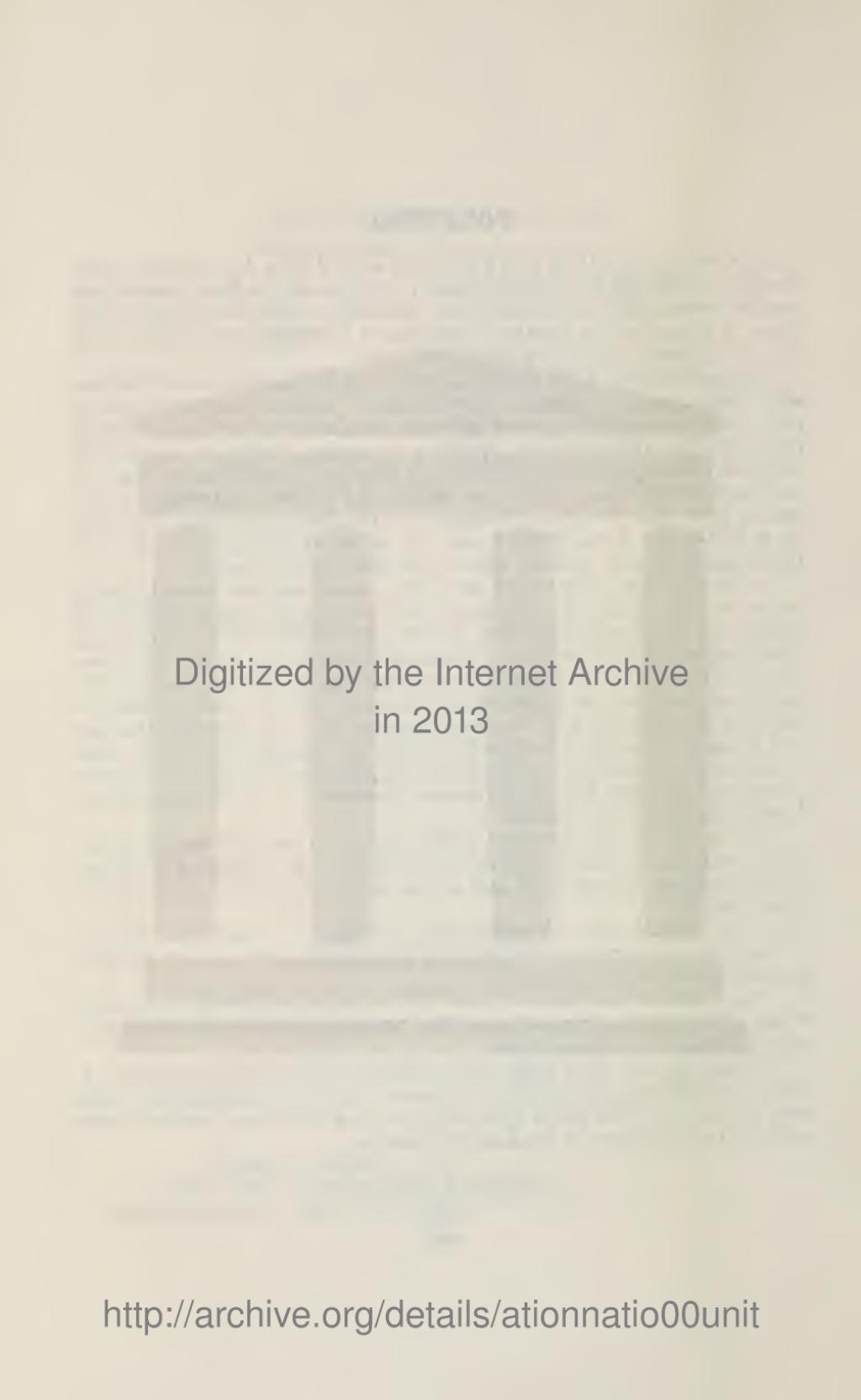
In view of the complexity of our immigration laws, I have prepared this pamphlet to assist the American public in achieving a better understanding of these laws and of the provisions contained in Public Law 94-571.

To accomplish that objective, this document contains: a copy of the new law; a sectional analysis; and a series of questions and answers regarding the effect of the law.

The "question and answer" format is intended to provide the reader with a simplified explanation of the primary purpose of, and basic changes made by, this new law.

It is my sincere hope that this Committee print will also serve as a valuable reference for persons interested in U.S. immigration laws and policies and for those with relatives and friends abroad who are seeking to immigrate to the United States.

JOSHUA EILBERG,
*Chairman, Subcommittee on Immigration,
Citizenship, and International Law.*

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1. PUBLIC LAW 94-571

Public Law 94-571
94th Congress, H.R. 14535
October 20, 1976

An Act to amend the Immigration and Nationality Act, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Immigration and Nationality Act Amendments of 1976".

SEC. 2. Section 201 of the Immigration and Nationality Act (8 U.S.C. 1151) is amended—

(1) by striking out subsection (a) and inserting in lieu thereof the following:

"SEC. 201. (a) Exclusive of special immigrants defined in section 101(a) (27), and immediate relatives of United States citizens as specified in subsection (b) of this section, (1) the number of aliens born in any foreign state or dependent area located in the Eastern Hemisphere who may be issued immigrant visas or who may otherwise acquire the status of an alien lawfully admitted to the United States for permanent residence, or who may, pursuant to section 203(a)(7), enter conditionally, shall not in any of the first three quarters of any fiscal year exceed a total of 45,000 and shall not in any fiscal year exceed a total of 170,000; and (2) the number of aliens born in any foreign state of the Western Hemisphere or in the Canal Zone, or in a dependent area located in the Western Hemisphere, who may be issued immigrant visas or who may otherwise acquire the status of an alien lawfully admitted to the United States for permanent residence, or who may, pursuant to section 203(a)(7), enter conditionally shall not in any of the first three quarters of any fiscal year exceed a total of 32,000 and shall not in any fiscal year exceed a total of 120,000."; and

(2) by striking out subsections (c), (d), and (e).

SEC. 3. Section 202 of the Immigration and Nationality Act (8 U.S.C. 1152) is amended—

(1) by striking out the last proviso in subsection (a);

(2) by striking out subsection (c) and inserting in lieu thereof the following:

"(c) Any immigrant born in a colony or other component or dependent area of a foreign state overseas from the foreign state, other than a special immigrant, as defined in section 101(a) (27), or an immediate relative of a United States citizen, as defined in section 201(b), shall be chargeable for the purpose of the limitations set forth in sections 201(a) and 202(a), to the hemisphere in which such colony or other component or dependent area is located, and to the foreign state, respectively, and the number of immigrant visas available to each such colony or other component or dependent area shall not exceed 600 in any one fiscal year."; and

(3) by inserting at the end thereof the following new subsection:

"(e) Whenever the maximum number of visas or conditional entries have been made available under section 202 to natives of any single foreign state as defined in subsection (b) of this section or any dependent area as defined in subsection (c) of this section in any fiscal year, in the next following fiscal year a number of visas and conditional entries, not to exceed 20,000, in the case of a foreign state or 600 in the case of a dependent area, shall be made available and allocated as follows:

"(1) Visas shall first be made available, in a number not to exceed 20 per centum of the number specified in this subsection, to qualified immigrants who are the unmarried sons or daughters of citizens of the United States.

"(2) Visas shall next be made available, in a number not to exceed 20 per centum of the number specified in this subsection, plus any visas not required for the classes specified in paragraph (1), to qualified immigrants who are the spouses, unmarried sons, or unmarried daughters of an alien lawfully admitted for permanent residence.

"(3) Visas shall next be made available, in a number not to exceed 10 per centum of the number specified in this subsection, to qualified immigrants who are members of the professions, or who because of their exceptional ability in the sciences or the arts will substantially benefit prospectively the na-

tional economy, cultural interests, or welfare of the United States, and whose services in the professions, sciences, or arts are sought by an employer in the United States.

"(4) Visas shall next be made available, in a number not to exceed 10 per centum of the number specified in this subsection, plus any visas not required for the classes specified in paragraphs (1) through (3), to qualified immigrants who are the married sons or the married daughters of citizens of the United States.

"(5) Visas shall next be made available, in a number not to exceed 24 per centum of the number specified in this subsection, plus any visas not required for the classes specified in paragraphs (1) through (4), to qualified immigrants who are the brothers or sisters of citizens of the United States, provided such citizens are at least twenty-one years of age.

"(6) Visas shall next be made available, in a number not to exceed 10 per centum of the number specified in this subsection, to qualified immigrants capable of performing specified skilled or unskilled labor, not of a temporary or seasonal nature, for which a shortage of employable and willing persons exists in the United States.

"(7) Conditional entries shall next be made available by the Attorney General, pursuant to such regulations as he may prescribe, in a number not to exceed 6 per centum of the number specified in this subsection, to aliens who satisfy an Immigration and Naturalization Service officer at an examination in any non-Communist or non-Communist-dominated country, (A) that (i) because of persecution or fear of persecution on account of race, religion, or political opinion they have fled (I) from any Communist or Communist-dominated country or area, or (II) from any country within the general area of the Middle East, and (ii) are unable or unwilling to return to such country or area on account of race, religion, or political opinion, and (iii) are not nationals of the countries or areas in which their application for conditional entry is made; or (B) that they are persons uprooted by catastrophic natural calamity as defined by the President who are unable to return to their usual place of abode. For the purpose of the foregoing the term 'general area of the Middle East' means the area between and including (1) Libya on the west, (2) Turkey on the north, (3) Pakistan on the east, and (4) Saudi Arabia and Ethiopia on the south: *Provided*, That immigrant visas in a number not exceeding one-half the number specified in this paragraph may be made available, in lieu of conditional entries of a like number, to such aliens who have been continuously physically present in the United States for a period of at least two years prior to application for adjustment of status.

"(8) Visas so allocated but not required for the classes specified in paragraphs (1) through (7) shall be made available to other qualified immigrants strictly in the chronological order in which they qualify."

SEC. 4. Section 203 of the Immigration and Nationality Act (8 U.S.C. 1153) is amended—

(1) by striking out "201(a)(ii)" each place it appears in paragraphs (1) through (7) of subsection (a) and inserting in lieu thereof in each such place "201(a)(1) or (2)";

(2) by striking out the period at the end of paragraph (3) of subsection (a) and inserting in lieu thereof a comma and the following: "and whose services in the professions, sciences, or arts are sought by an employer in the United States.;"

(3) by striking out the period at the end of paragraph (5) of subsection (a) and inserting in lieu thereof a comma and the following: "provided such citizens are at least twenty-one years of age.;" and

(4) by striking out the second sentence of subsection (e) and inserting in lieu thereof the following: "The Secretary of State shall terminate the registration of any alien who fails to apply for an immigrant visa within one year following notification to him of the availability of such visa, but the Secretary shall reinstate the registration of any such alien who establishes within two years following notification of the availability of such visa that such failure to apply was due to circumstances beyond his control. Upon such termination the approval of any petition approved pursuant to section 204(b) shall be automatically revoked."

SEC. 5. Section 212(a)(14) of such Act (8 U.S.C. 1182(a)(14)) is amended to read as follows:

"(14) Aliens seeking to enter the United States, for the purpose of performing skilled or unskilled labor, unless the Secretary of Labor has determined and certified to the Secretary of State and the Attorney General that (A) there are not sufficient workers who are able, willing, qualified (or equally qualified in the case of aliens who are members of the teaching profession or who have exceptional ability in the sciences or the arts), and available at the time of application for a visa and admission to the United States and at the place where the alien is to perform such skilled or unskilled labor, and (B) the employment of such aliens will not adversely affect the wages and working conditions of the workers in the United States similarly employed. The exclusion of aliens under this paragraph shall apply to preference immigrant aliens described in section 203(a)(3) and (6), and to nonpreference immigrant aliens described in section 203(a)(8);".

SEC. 6. Section 245 of the Immigration and Nationality Act (8 U.S.C. 1255) is amended to read as follows:

"SEC. 245. (a) The status of an alien who was inspected and admitted or paroled into the United States may be adjusted by the Attorney General, in his discretion and under such regulations as he may prescribe, to that of an alien lawfully admitted for permanent residence if (1) the alien makes an application for such adjustment, (2) the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence, and (3) an immigrant visa is immediately available to him at the time his application is filed.

"(b) Upon the approval of an application for adjustment made under subsection (a), the Attorney General shall record the alien's lawful admission for permanent residence as of the date the order of the Attorney General approving the application for the adjustment of status is made, and the Secretary of State shall reduce by one the number of the preference or nonpreference visas authorized to be issued under sections 202(e) or 203(a) within the class to which the alien is chargeable for the fiscal year then current.

"(c) The provisions of this section shall not be applicable to (1) an alien crewman; (2) an alien (other than an immediate relative as defined in section 201(b)) who hereafter continues in or accepts unauthorized employment prior to filing an application for adjustment of status; or (3) any alien admitted in transit without visa under section 212(d)(4)(C).".

SEC. 7. (a) Section 101(a)(27) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)) is amended by striking out subparagraph (A) and by redesignating subparagraphs (B) through (E) as subparagraphs (A) through (D), respectively.

(b) Section 204 of such Act (8 U.S.C. 1154) is amended to add a new subsection (f), to read as follows:

"(f) The provisions of this section shall be applicable to qualified immigrants specified in paragraphs (1) through (6) of section 202(e).".

(c) Section 211(b) of such Act (8 U.S.C. 1181(b)) is amended by striking out "section 101(a)(27)(B)" and inserting in lieu thereof "section 101(a)(27)(A)".

(d) Section 212(a)(24) of such Act (8 U.S.C. 1182(a)(24)) is amended by striking out "101(a)(27)(A) and (B)" and inserting in lieu thereof "101(a)(27)(A) and aliens born in the Western Hemisphere".

(e) Section 241(a)(10) of such Act (8 U.S.C. 1251(a)(10)) is amended by striking out the language in the parentheses and inserting in lieu thereof the following: "other than an alien described in section 101(a)(27)(A) and aliens born in the Western Hemisphere".

(f) Section 244(d) of such Act (8 U.S.C. 1254(d)) is amended by striking out "is entitled to special immigrant classification under section 101(a)(27)(A), or".

(g) Section 21(e) of the Act of October 3, 1965 (Public Law 89-236; 79 Stat. 921), is repealed.

SEC. 8. The Act entitled "An Act to adjust the status of Cuban refugees to that of lawful permanent residents of the United States, and for other purposes", approved November 2, 1966 (8 U.S.C. 1255, note), is amended by adding at the end thereof the following new section:

"SEC. 5. The approval of an application for adjustment of status to that of lawful permanent resident of the United States pursuant to the provisions of section 1 of this Act shall not require the Secretary of State to reduce the number of visas authorized to be issued in any class in the case of any alien who is physically present in the United States on or before the effective date of the Immigration and Nationality Act Amendments of 1976."

SEC. 9. (a) The amendments made by this Act shall not operate to affect the entitlement to immigrant status or the order of consideration for issuance of an immigrant visa of an alien entitled to a preference status, under section 203(a) of the Immigration and Nationality Act, as in effect on the day before the effective date of this Act, on the basis of a petition filed with the Attorney General prior to such effective date.

(b) An alien chargeable to the numerical limitation contained in section 21(e) of the Act of October 3, 1965 (79 Stat. 921), who established a priority date at a consular office on the basis of entitlement to immigrant status under statutory or regulatory provisions in existence on the day before the effective date of this Act shall be deemed to be entitled to immigrant status under section 203(a)(8) of the Immigration and Nationality Act and shall be accorded the priority date previously established by him. Nothing in this section shall be construed to preclude the acquisition by such an alien of a preference status under section 203(a) of the Immigration and Nationality Act, as amended by section 4 of this Act. Any petition filed by, or in behalf of, such an alien to accord him a preference status under section 203(a) shall, upon approval, be deemed to have been filed as of the priority date previously established by such alien. The numerical limitation to which such an alien shall be chargeable shall be determined as provided in sections 201 and 202 of the Immigration and Nationality Act, as amended by this Act.

SEC. 10. The foregoing provisions of this Act, including the amendments made by such provisions, shall become effective on the first day of the first month which begins more than sixty days after the date of enactment of this Act.

Approved October 20, 1976.

Legislative History:

HOUSE REPORTS: No. 94-1553 (Comm. on the Judiciary).

CONGRESSIONAL RECORD, Vol. 122 (1976):

Sept. 29, considered and passed House.

Oct. 1, considered and passed Senate.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 12,

No. 43:

Oct. 21, Presidential statement.

2. SECTION-BY-SECTION ANALYSIS OF PUBLIC LAW 94-571

Section 1.—Popular name title.

Section 2.—Retains present limitation on Western Hemisphere immigration of 120,000.

Section 3.—Establishes a worldwide 20,000 per-country limitation on immigration. Increases the numerical limitation for dependent areas from 200 to 600, and provides that visas issued shall be chargeable both to the foreign state and to the Hemisphere in which the dependent area is located.

Establishes a formula for distributing visas throughout the preference system for those countries and dependencies which reach their numerical ceilings.

Section 4.—Imposes the existing preference system on the Western Hemisphere with two exceptions: (1) a job offer is required for third preference visa applicants; and (2) the fifth preference (brothers and sisters of U.S. citizens) is limited to those cases where the U.S. citizens are at least 21 years of age.

Requires the Secretary of State to terminate the registration of any alien who fails to apply for an immigrant visa within one year after notification of availability of the visa.

Section 5.—Removes the existing exemption from the labor certification requirement for Western Hemisphere natives who are close relatives of U.S. citizens and permanent resident aliens to conform with application of preference system to the Western Hemisphere under Section 4 of the bill.

Revises labor certification requirement as it applies to members of the teaching profession and to those of exceptional ability in the sciences and arts to require the Secretary of Labor to find that equally qualified Americans must be available for the job in order to deny a labor certification.

Section 6.—Allows the adjustment of status of Western Hemisphere natives but prohibits adjustment to certain aliens who have obtained employment in violation of their nonimmigrant status.

Section 7.—Technical and conforming amendments.

Section 8.—Provides that Cuban refugees who adjust their status shall not be chargeable to the Western Hemisphere ceiling.

Section 9.—Provides a savings clause for Eastern Hemisphere natives who have a priority date prior to the effective date of this bill. Provides that Western Hemisphere aliens who have an existing priority date are deemed eligible for nonpreference status and accords them their previously established priority date. In the event they are able to establish eligibility for a preference category, they are also accorded their previously established priority date.

Section 10.—Delayed effective date.

3. QUESTIONS AND ANSWERS

(1) *What is the basic purpose of the "Immigration and Nationality Act Amendments of 1976"?*

The basic purpose of the Act of October 20, 1976 is to apply the same immigration provisions to all countries of the world and, more specifically, to eliminate the inequities in the regulation of Western Hemisphere immigration which inadvertently resulted from the far-reaching 1965 amendments to the Immigration and Nationality Act. An annual ceiling of 120,000 imposed on Western Hemisphere countries by the 1965 amendments was not combined with the preference system or per-country limits which regulate Eastern Hemisphere immigration in conjunction with a 170,000 annual ceiling. As a result, in effect, the United States has had two different immigration laws for the two hemispheres. For example, immigrant visas have been immediately available to natives of almost all Eastern Hemisphere countries applying under preference categories based on family relationship. However, because Western Hemisphere immigration has proceeded on a first-come, first served basis, unregulated by a preference system, Western Hemisphere natives with identical family relationships to those permitting immediate entry for natives of Eastern Hemisphere countries have had to wait their turn in line—now well over 2 years—for admission under the heavily oversubscribed Western Hemisphere ceiling.

The basic purpose of the 1976 amendments is to rectify this unintended and grossly inequitable situation. With minor modifications equally applicable to both hemispheres, it extends to the Western Hemisphere the seven-category preference system, the 20,000 per-country limit and the provisions for adjustment of status currently in effect for Eastern Hemisphere countries.

(2) *Does the new law change the existing Eastern and Western Hemisphere ceilings?*

No, the ceilings are unchanged: 170,000 for the Eastern Hemisphere, and 120,000 for the Western Hemisphere. The preference system and the per-country limits will be applied to the two hemispheres under these separate ceilings.

(3) *Does it change the number of immigrants who may enter annually from each country?*

It establishes a 20,000 per-country limit on the number of immigrants who may enter annually, applicable to all countries. This represents a change for Western Hemisphere countries, which have never before been subject to a per-country numerical limitation. A 20,000 per-country limit has been in effect for all countries in the Eastern Hemisphere as a result of the 1965 amendments abolishing the national origins quota system.

(4) *What effect may the per-country limit be expected to have on immigration levels from specific Western Hemisphere countries?*

Based on fiscal year 1975 figures, it will in all probability reduce the number of admissions from Mexico. In fiscal year 1975, Mexico accounted for 62,205 immigrants, or twice as many as any other country in either hemisphere. Of these 20,228 were exempt from numerical limitations, primarily because of immediate relative status (spouse or child of a U.S. citizen, or parent of a U.S. citizen over 21), and would be unaffected by the provisions of the new law. A total of 41,894 entered under the Western Hemisphere ceiling; under the new law, this latter figure would be limited to 20,000.

The concept of a "special relationship" between this country and certain other countries as a basis for our immigration law has been rejected, by both the Executive and Legislative Branches of Government in favor of a uniform treatment for all countries.

(5) *Why was Western Hemisphere immigration previously unregulated by the preference system and per-country limits?*

The abolition of the national origins quota system was the primary purpose of the 1965 legislation, and this emphasis accounts in large part for the limited consideration given to the actual implementation of the Western Hemisphere ceiling during the 1965 debate. It was not expected that the demand would so far exceed supply under the 120,000 ceiling. Thus the inequitable consequences which have resulted from first-come, first-served visa allocation were not anticipated. Furthermore, in addition to establishing a ceiling to go into effect July 1, 1968, the 1965 act also established a Select Commission on Western Hemisphere Immigration, charged with the responsibility of recommending "whether, and if so how, numerical limitations should be imposed upon immigration to the United States from the nations of the Western Hemisphere." The Select Commission's recommendation that the effective date of the ceiling be delayed for a year in order to allow time for further study was not acted on, and the 120,000 ceiling went into effect on July 1, 1968.

(6) *What changes are made in the preference categories?*

Changes are made in the third and fifth preference categories only.

The third preference category is modified to limit it to those members of the professions, scientists, and artists whose services are sought by employers in the United States. Previously, members of the professions, scientists and artists could petition for third preference entry on the basis of their qualifications, without the need for a prospective employer. The fifth preference category is modified to require that U.S. citizens be 21 or over in order to petition for the fifth preference entry of their siblings. Previously, there was no age requirement for the petitioning U.S. citizens.

The modified preference system is as follows:

First preference (unmarried sons and daughters over 21 of U.S. citizens): 20 percent of the respective hemispheric limitation in any fiscal year;

Second preference (spouses and unmarried sons and daughters of aliens lawfully admitted for permanent residence): 20 percent of the limitation, plus any numbers not required for first preference;

Third preference (members of the professions or persons of exceptional ability in the sciences and arts whose services are sought by U.S. employers): 10 percent of the limitation;

Fourth preference (married sons and daughters of U.S. citizens): 10 percent of the limitation, plus any numbers not required by the first three preference categories;

Fifth preference (brothers and sisters of U.S. citizens 21 or over): 24 percent of the limitation, plus any numbers not required by the first four preference categories;

Sixth preference (skilled and unskilled workers in short supply): 10 percent of the limitation;

Seventh preference (refugees): 6 percent of the limitation;

Nonpreference (other immigrants): numbers not used by the seven preference categories.

Labor certification is required equally of third, sixth, and non-preference applicants from both hemispheres. (See question 13 regarding labor certification.)

(7) *How does the new law change the way in which the preference system is applied to individual countries?*

Under previous law, the percentages allotted annually to each preference category were applicable only on a hemisphere-wide basis, and not to the individual countries. That is, within the 20,000 per-country limit, visas were distributed to applicants from each country on a first-come, first-served basis according to preference priority. The 1976 amendments provide that, in addition to being applicable on a hemisphere-wide basis, visa percentage allotments for preference categories will also be applicable to any country or dependent area to which the maximum number of visas were made available in the preceding year.

This provision would not increase or decrease the total number of visas available to those countries to which it applied; nor is it intended to require the issuance of the total number of immigrant visas (20,000) available to such country. Its purpose is to insure a fairer distribution of visas under the preference system for those countries whose overall visa demand regularly exceeds the number available, or for those with a particularly high demand for visas under a specific preference category.

(8) *What changes are made regarding the entry of immigrants from the colonies and dependencies of other countries?*

The annual allotment for natives of colonies or dependent areas is increased from 200 to 600. Visas made available to the dependencies will continue to be charged as subquotas to the per-country limit of the mother country, as in the past. However, the new law provides that they will henceforth be charged to the ceiling of the hemisphere where the dependencies are located, instead of the hemisphere of the mother country.

(9) *Does the new legislation address the problem of illegal aliens?*

Yes, it contains a provision aimed at deterring tourists, foreign students, and other nonimmigrants from working illegally. Aliens who have entered the country legally as nonimmigrants and who have subsequently violated the terms of their admission by accepting unauthorized employment are prohibited from changing their status

to that of permanent resident alien under the adjustment of status provisions of the law. The only exception allowed is for aliens who are immediate relatives of U.S. citizens.

(10) *What other changes are made regarding adjustment of status?*

Under the adjustment of status provision, certain aliens legally in the United States are permitted to adjust to immigrant or permanent resident status without leaving the country. Under the 1965 amendments, this privilege was limited to natives of Eastern Hemisphere countries. The 1976 act restores adjustment of status eligibility to Western Hemisphere aliens as well. This provision is in keeping with the legislative goal of providing equal treatment to all individuals regardless of their place of birth.

In addition to prohibiting adjustment of status by aliens who have accepted unauthorized employment (see question 9), the amendments disqualify from adjustment those aliens who have been admitted in transit without visa. The latter provision confirms existing administrative procedures.

(11) *Will Cuban refugees who adjust their status still be chargeable to the Western Hemisphere ceiling?*

Cuban refugees who are present in the United States and henceforth adjust their status to that of permanent residents will no longer be charged to the 120,000 Western Hemisphere ceiling. This amendment has long been recommended, primarily on the grounds that this special humanitarian program of the United States Government should not be conducted at the expense of other Western Hemisphere countries, as has been the case.

[In a statement released September 16, 1976, the Attorney General announced that Cuban refugees in the United States who adjust their status will no longer be chargeable to the Western Hemisphere ceiling. This decision, based on an opinion of the Office of Legal Counsel in the Department of Justice, represents a departure from administrative practice since 1968. The Committee believes that legislation is appropriate here.]

(12) *Will total immigration increase under the new law?*

There will be a temporary increase, reflecting the exemption from chargeability to the Western Hemisphere ceiling of Cuban refugees adjusting to immigrant status. There are approximately 60,000 pending applications for adjustment by Cuban refugees. Apart from this temporary and limited increase, the new law will not increase immigration.

(13) *What is labor certification, and how will it be changed under the new law?*

The labor certification provision set forth in Section 212(a)(14) of the Immigration and Nationality Act is intended to protect the domestic labor force. That section provides for the excludability of certain categories of aliens unless the Secretary of Labor issues a certification indicating (1) that there are not sufficient U.S. workers who are "able, willing, qualified, and available" in the alien's occupational category and (2) that the alien's employment will not adversely affect the wages and working conditions of similarly situated American

workers. This legislation retains the labor certification provision with minor modification and extends it equally to third and sixth and nonpreference applicants from both hemispheres.

The new law also includes an amendment to the provision requiring the Secretary of Labor to determine that "equally qualified" American workers are available in order to deny a labor certification for members of the teaching profession or for those who have exceptional ability in the arts and sciences. This amendment will assist colleges and universities which have been impeded in their efforts to acquire outstanding educators or faculty members as the result of an overly rigid interpretation of the law as it pertains to research scholars and exceptional members of the teaching profession.

(14) *What effect will the new law have on those currently waiting in line for admission under the Western Hemisphere ceiling?*

The preference system will go into effect for the Western Hemisphere immediately upon the effective date of this legislation (January 1, 1977), in conjunction with a savings clause aimed at preserving the entitlement to immigrant status for all aliens who filed and were eligible for admission under the provisions of law previously regulating Western Hemisphere immigration. More specifically, all Western Hemisphere aliens found eligible for immigrant status prior to the effective date of the new law are automatically eligible for nonpreference entry, and accorded their previously established priority dates. They are further entitled, if eligible, to preference status under one of the seven preference categories. Those eligible under the higher preferences will receive visas in advance of those entering under the nonpreference category, even though the latter may have earlier priority dates.



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